

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Toll Free Service Access Codes) CC Docket No. 95-155

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COMMENTS OF CABLE & WIRELESS, INC.

Cable & Wireless, Inc. ("CWI") respectfully submits its comments regarding the above-captioned Notice of Proposed Rulemaking. ("NPRM")¹ CWI commends the Commission for developing a comprehensive and thoughtful plan to move forward on the implementation of additional toll-free codes. CWI agrees that these numbers must be allocated on a fair and equitable basis, and without disruption to existing customers. However, CWI urges the Commission to consider the needs of all users, not just certain users who believe that their current telephone numbers have value above and beyond that accorded to other telephone subscribers.

I. INTRODUCTION

CWI is a domestic and international common carrier which provides a wide range of switched and private line services. CWI is also the largest nationwide provider of interexchange telephone service serving exclusively business subscribers. Because toll-free codes are used primarily by business subscribers, CWI's comments provide the

¹ In the Matter of Toll Free Access Codes, CC Docket No. 95-155, adopted October 4, 1995, released October 5, 1995, hereinafter ("NPRM").

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Commission with a unique perspective on how business subscribers view toll-free numbers, and how these subscribers intend to use toll free service in the future.

II. CWI SUPPORTS SOME OF THE COMMISSIONS PROPOSALS TO MAKE TOLL FREE CODES AVAILABLE FOR ALL USERS

CWI wholeheartedly supports the Commission's stated goals of ensuring efficient use and avoiding unanticipated rapid depletion of toll free codes.² To this end, CWI supports the Commission's proposal to reduce the lag times built into the Industry Guidelines for 800 Number Administration. When these Guidelines were created, it could not have been anticipated that toll free codes would become a valuable, finite public resource. Consequently, the Guidelines do not reflect the present-day value of toll free codes, and should be revised to accommodate customers' and RespOrgs' needs.

The Commission's proposal to reduce lag time for assigned, aging and suspended numbers to four months are a welcome step. However, CWI urges the Commission not to reduce the lag time for reserved numbers. CWI asserts that the full 60 day period is needed by RespOrgs -- especially smaller RespOrgs -- to update systems and install equipment necessary to provide service to new toll free customers.

In addition to shortening lag times, the Commission puts forth other proposals to make toll free numbers available to subscribers. For a host of technical and administrative reasons, CWI considers these proposals to be infeasible at this time. The Commission's proposal to require RespOrgs to have an affirmative request from a subscriber in order to reserve a toll free number would hinder sales efforts and stymie the business development

² NPRM at ¶12.

activities of carriers. The Commission's proposed SIC plan would be financially and administratively burdensome, as would an escrow requirement. While the use of PIN codes is efficient, technical difficulties limit the compatibility of PIN code technology with services that use non-DTMF capable equipment, as well as for fax-to-fax communication, paging notification, and many other services. All of these proposals would place huge administrative burdens on the carriers to implement and on the Commission to oversee their operation. For these reasons, CWI does not support the implementation of an affirmative request, escrow, SIC or PIN Code scheme to ensure efficient use of toll free codes.

III. THE COMMISSION MUST BE CAREFUL TO AVOID SETTING A PRECEDENT WHICH WOULD ALLOW SUBSCRIBERS TO OBTAIN PROPERTY RIGHTS IN THEIR TELEPHONE NUMBERS.

Fundamental to the development of a plan for the implementation of new toll free access codes is the resolution of contentious issues surrounding vanity numbers. The NPRM seeks comments on numerous aspects of toll free vanity numbers.³ Specifically, the Commission seeks input on whether the current holder of an 800 vanity number should have a right of first refusal (or right of replication) when additional toll free codes become available. The Commission notes that companies may have a financial interest in being able to reserve equivalent vanity numbers in subsequent codes because of the substantial resources which these companies have devoted to enhancing the visibility and customer recognition of their toll free numbers.

³ Vanity numbers are defined by the Commission as "a telephone number for which the letters associated with the number's digits on a telephone handset spell a name or word of value to the number holder, or any telephone number in which the user has a particular interest." (NPRM at ¶35)

CWI believes that the Commission could set a dangerous precedent if it acknowledges an automatic right of replication, however. Telephone numbers are a limited resource which do not belong to any single subscriber. Users are aware that their numbers may be changed or reassigned if the overall needs of the numbering administration dictate. For example, many users have seen their area codes change in recent years. These changes, while not particularly welcomed by telephone subscribers, are necessary to prevent the exhaust of telephone numbers in a given geographic location. To the best of CWI's knowledge, telephone subscribers are not given an automatic right to replicate their existing number in additional area codes. While subscribers are free to request particular telephone numbers, numbers are typically assigned by the appropriate numbering administrator on a first come, first served basis.

Moreover, the FCC has always maintained that carriers "do not own codes or numbers but, rather, administer their distribution for the efficient operation of the public switched telephone network."⁴ In keeping with this sentiment, carriers have traditionally made clear to their customers, through their tariffs or other means, that subscribers have no ownership interests or property rights in their telephone numbers.

The Commission's adoption of a proposal which recognizes that users have certain rights in existing and future telephone numbers may set a dangerous precedent. When area codes splits or other number assignment issues arise, customers may make similar demands for replication. CWI urges the Commission to think carefully before it adopts a proposal which may be viewed as allowing some users to gain an interest in their telephone number.

⁴ NPRM at ¶25.

IV. THE COMMISSION IS OBLIGATED TO CONSIDER THE RIGHTS OF ALL USERS

A) The Commission Should Not Limit the Right of First Refusal

This warning notwithstanding, if the Commission decides to permit number replication, it is imperative that the Commission not discriminate in favor of only certain 800 subscribers. The Commission's definition of vanity numbers, as presented in the NPRM, includes all numbers of value to the subscriber, not just those codes which spell out a particular name or word. The Commission must be careful not to deny holders of numbers which do not spell out a name or word the right to replicate their numbers. As the phrase goes, beauty is in the eye of the beholder. Many of these latter number-holders believe their toll-free numbers are unique, and have invested significant resources to create an association between the particular telephone number and their businesses. Anything short of providing all toll-free customers with the option to replicate would unfairly discriminate against a large group of users. Consequently, the FCC must extend any replication decision to all toll free customers.

B) Allowing Only Some Users to Replicate 800 Numbers Unfairly Discriminates Against Smaller RespOrgs

Allowing only certain users the right of first refusal has the additional negative effect of unfairly discriminating against smaller carriers. The 800 numbers which generate the largest call volumes -- the 1-800-THE-CARD, 1-800-HOLIDAY and similar accounts -- are typically held by the largest IXC's. This results in part from AT&T's historic

dominance in the pre-portability 800 marketplace, from the simple reluctance of customers to change RespOrgs upon implementation of 800 number portability, and from the sheer volume of calls generated to the largest 800 users which typically requires the network capabilities of the largest interexchange carriers. Allowing only customers whose codes spell out a recognizable word or phrase to replicate their numbers almost guarantees that the larger carriers will continue to capture significant revenues associated with these accounts, while denying smaller carriers the chance to do the same with their own customers. Moreover, users may view the inability of a smaller carrier to offer replication as the fault of the carrier, rather than a result of an FCC policy. Users may consequently infer that the small carrier offers an inferior product, and choose to take their business elsewhere. CWI fears this outcome -- that it will lose current and further business as a result of a policy beyond its control

For these reasons, if the Commission does allow replication, CWI urges it to extend the privilege to all users. The only way the public interest can truly be served in a fair and equitable manner is for the FCC to recognize that all users of 800 telephone numbers have an equally valid claim to replicate their number, and to extend the right of first refusal to all 800 number holders.

V THE MECHANICS OF 888 IMPLEMENTATION

A) The Commission Should Adopt A Plan to Facilitate 888 Implementation

Concerns associated with the right of first refusal center around two potential outcomes. First, grant of the right of first refusal increases the likelihood of rapid 888

depletion. Currently, over 90 percent of total available 800 telephone numbers are assigned to users. If all 800 users chose to replicate their numbers, the industry would once again face exhaustion of available toll free numbers almost immediately. Second, unlimited replication would inevitably lead to the overload of the SMS system in the first minutes of 888 implementation. In recommending unlimited right of first refusal, CWI did not ignore these potential deleterious outcomes. However, CWI does not believe that these grim scenarios will necessarily come to pass. First, a recent study performed by the Service Management System/800 Numbering Administration Committee ("SNAC") indicates that only 24 percent of current 800 customers would replicate that number in a new toll-free codes if given the option. Second, and more importantly, CWI is confident that the Commission can develop a plan to smooth the introduction of 888 and subsequent toll free access codes, and is more than willing to assist the Commission with the plan's development. As an initial effort to assist, CWI recommends that the Commission include the following suggestions in any plan it adopts.

B) The Commission Should Permit Pre-Reservation of Replicated 800 Numbers

CWI recommends that, if the Commission chooses to permit replication of 800 numbers, it also permit the pre-reservation of replicated numbers. This move is necessary to spread out the demands placed on the SMS system over a longer period of time. To prepare for pre-reservation, CWI suggests that all RespOrgs be required to poll their existing 800 customers to determine which customers would like to replicate their numbers. RespOrgs would be required to submit a list of numbers to be replicated to the

SMS Administrator by a date which will be agreed upon by industry advisory groups. The SMS Administrator would then proceed to pre-reserve the lists of numbers during the ensuing period prior to 888 implementation.

C) The Commission Should Also Permit Pre-Reservation of “New Business” 888 Numbers

The reasons which justify pre-reservation for replicated numbers apply equally as well to “new business” 888 numbers. Without pre-reservation of these new 888 codes, the deluge of 888 requests in the initial weeks of implementation may again very likely lead to a failure of the SMS system. To prevent this outcome, CWI recommends that, once the replicated number pre-reservation period had ended, the Commission immediately commence a pre-reservation period for “new business” 888 numbers.

CWI recognizes that it is not practical to make the SMS Administrator responsible for reserving all new 888 numbers on behalf of all RespOrgs a second time. To prevent an SMS overload without again burdening the Administrator, CWI proposes two options. First, CWI proposes that the Commission limit the quantity of new 888 codes which a RespOrg can reserve during the pre-reservation period to three times its current 800 allocation. In addition to limiting the impact of pre-reservation on the SMS system, this method would prevent the inevitable run-down of numbers which would result from a reversion to the previous “1,000 numbers or 15 percent” formula. It would also perpetuate the fairness built into the Commission’s current allocation scheme which takes into account both a carriers market share and the growth rate of its toll free business.

In the alternative, CWI proposes that the Commission prohibit the use of mechanized generic interfaces (MGI) for pre-reservation of 888 numbers. A RespOrg using a mechanized interface can process large volumes of actions quickly -- approximately 100 numbers per minute. Acting in unison, the six carriers which possess an MGI interface could overload the SMS system in a matter of minutes. Furthermore, the speed of an MGI and its direct link to the SMS database provides the six carriers which possess it a significant competitive advantage over other RespOrgs. Consequently, the suspension of the use of MGIs would both prevent harm to the SMS database and level the competitive playing field among RespOrgs for the initial 888 implementation.

Implementation of either or both of these mechanisms would slow the depletion of 888 numbers and limit the impact of replication and pre-reservation on the SMS system. Consequently CWI recommends that the Commission permit the pre-reservation of both replicated 800 and new business 888 numbers, but that it control the pre-reservation process via use of one or both of the mechanisms outlined above.

CWI recommends that the pre-reservation period for new business 888 numbers close some time before the March 1 implementation date for 888 to allow for the gradual turn up of the new codes.

D) The Commission Should Continue to Limit Reservation of Toll Free Codes During The Initial Period of Time Following 888 Implementation

Although lessened by pre-reservation, the threats of SMS overload and rapid 888 depletion will continue after the March 1 implementation date. For this reason, CWI recommends that the Commission again extend one or both of the above methods to

control reservation of toll free codes after the March 1 implementation date. Suspension of mechanized interfaces is the most certain way to protect against system overload in the initial period following 888 implementation. CWI recognizes, however, that manual input of reservation requests is both cumbersome and burdensome, and should not be extended beyond the period during which it serves a legitimate need. Therefore, CWI recommends that, if the Commission chooses to extend the suspension of mechanized interface system, it do so for only the first two weeks following March 1. CWI estimates that this extra two week period is adequate to accommodate any pent-up demand for new codes which were not met during the pre-reservations period.

For the same reason, if the Commission is to continue an allocation method, it should do so only for the two month period following 888 implementation.

E) Other Remedies Available to the Commission to Limit the Unwarranted Depletion of 888 Codes

The proposals outlined thus far seek to control 888 depletion and SMS distress by limiting the quantity of numbers a RespOrgs can reserv at one time. The Commission can also enact safeguards which may incent the toll free subscriber to limit its consumption of toll free numbers to only those codes for which it has a legitimate business need. First, the FCC could require customers to pay a one-time nominal fee to their RespOrg to reserve a replicated 888 number. This fee could be used by the RespOrg to defray the administrative costs involved in the pre-reservation process, such as polling customers, processing paperwork, and actually reserving new numbers. Second, the Commission

could require carriers to charge a monthly fee for the additional 888 number.⁵ These safeguards would prevent customers from replicating 888 numbers for which they do not have a legitimate business need. CWI recommends that the Commission keep these alternative mechanisms in mind when developing its plan for 888 implementation.

With the implementation of the mechanisms outlined above, CWI is confident that the replication of 800 numbers and the implementation of 888 and subsequent codes can be accomplished without undue harm to the SMS system or undue depletion of 888 codes.

VI. WAREHOUSING OF TOLL FREE CODES

In addition to a manual interface and an allocation plan, CWI recognizes that further safeguards may be needed to prevent warehousing. At the same time, CWI recognizes that new product developments may demand a quantity of numbers in excess of that granted by some allocation methods. To accommodate these countervailing demands, CWI proposes that a plan which would both protect against warehousing while allowing RespOrgs with legitimate business development needs to receive additional numbers. This plan assumes that the Commission continues to allocate RespOrgs three times their current 800 allocation for the two months following 888 implementation. In this plan, the Database Administrator would be responsible for monitoring the take-rates of RespOrgs. RespOrgs which reserve more than three times their current weekly allocation would be suspected of warehousing. In these instances, the Database Administrator would be required to notify the Commission. The Commission would then have the discretion to

⁵ Of course, carriers should be free to waive this fee if customers reach minimum monthly usage levels.

query the RespOrg about its overage. If the Commission were satisfied that the RespOrg had legitimate reason for reserving more numbers than allocated, then no action by the Commission would be warranted. Legitimate reasons include the roll-out of a new product, entry into a new market, etc. If the Commission were not convinced of the RespOrg's legitimate purpose, it could impose a penalty on the RespOrg for violation of its Title II obligations.⁶ CWI believes that an appropriate remedy would be for the Commission limit the quantity of numbers that the RespOrg could reserve or activate on a going-forwards basis. Other remedies include the imposition of a fine or the suspension of RespOrg status. A procedure would need to be developed to systematize the grant of waiver for legitimate business purposes.

After the two month adjustment period, RespOrgs would once again be permitted to reserve up to 1,000 numbers or 15 percent of total working numbers on a first come, first serve basis. This method was viably used in the period prior to the hoarding of toll free codes. CWI found it adequate to permit new business development while, at the same time, placing a limit on the runaway depletion of toll free numbering resources.

CWI asserts that utilization of an initial allocation method to prevent warehousing is far superior to the alternative mechanisms proposed by the Commission to control the depletion of toll free codes. As discussed in Section II *supra*, all of the alternative methods -- affirmative request, escrow and PIN and SIC code requirement -- place financial and administrative burdens on both RespOrgs and the Commission. A simple

⁶ The Commission tentatively concludes that warehousing by a carrier subject to Title II of the Communications Act of 1934, as amended, is an unreasonable act. CWI proposes that sanctions for warehousing apply to all RespOrgs, not just RespOrgs which are carriers subject to Title II obligations.

numerical limit on the quantity of numbers which a RespOrg can reserve and activate accomplishes the same end, but in a more efficient manner.

VII. IMPLEMENTATION PLAN FOR THE NEXT TOLL FREE CODE BEYOND 888

CWI agrees with the Commission that the industry must improve the transition process associated with the introduction of a new toll free code, and it further agrees that it is reasonable to require carriers to implement new toll free codes on six months' notice. However, CWI cautions that carriers should not be given any less than six months' notice to implement a new code. Although carriers and equipment vendors are re-tooling their switches to support 888 as well as the remaining toll free codes, the concomitant processes which go hand-in-hand with switch alteration demand at least a six month time frame. Pricing tables, billing systems and order entry processes must all be updated, and marketing literature must be revised to reflect the new codes. These processes currently require at least six months to accomplish⁷, and will continue to require this amount of time despite any anticipatory adjustments built into switches.

In order to make it feasible that carriers are afforded six months to prepare for the introduction of a new code, CWI recommends the Commission combine two of its implementation proposals. First, CWI supports the Commission's proposal to identify a trigger which alerts the industry that the current toll free code is near depletion, and which commences the preparation of the next toll free code for deployment. CWI suggest that

⁷ The six month time frame for the introduction of new codes has precedence in current practice. At present, RBOCs provide six months' notice of any NXX changes to permit equipment vendors and other carriers to make any changes necessary to support the new code.

the trigger should be between 60 - 70 percent depletion of the existing codes. A higher trigger (e.g. 80 or 90 percent) would necessitate immediate rationing if existing codes were to last until the implementation of the new code. A trigger lower than 60 percent would require carriers to commit resources to the introduction of a new code sooner that would otherwise be necessary.

Second, CWI supports the implementation of a circuit breaker model to control consumption of toll free numbers, and recommends that the Commission use a trigger between 60 - 70 percent to commence the circuit breaker plan. Once the trigger is “tripped”, the six month implementation period for a new code would begin. Within that six month period, RespOrgs will be allocated numbers according to a circuit breaker plan. However, whereas in the NPRM, the Commission proposes to allocate numbers based on fixed period in history (e.g. the previous twelve months or the five highest take-rate days of the prior month), CWI recommends that each RespOrg’s ration be based on a moving average. For example, in any given month, a RespOrg would be permitted to reserve as many numbers as it had reserved, on average, for the previous six months. Given an early enough trigger, this method of allocation would slow the consumption of toll free codes enough to prevent exhaustion before the introduction of a new code, while, at the same time, not tying a RespOrg’s allocation to a particular point in history. This method minimizes the ill-effects of rationing on the product development plans of a RespOrg by basing allocation on more current needs. For these reasons, CWI recommends that the Commission marry the trigger and the circuit breaker model proposals to manage the implementation of codes beyond 888 in a fair and efficient manner.

VIII. CONCLUSION

CWI believes that the Commission has proposed many reasonable steps to ensure a smooth transition to 888 and future toll-free calling codes. Like 800, these dialing patterns will provide numerous benefits to business and residential telephone subscribers. However, CWI urges the Commission to protect the rights of all users -- not just a select few -- and to enact appropriate safeguards to help protect against abuse of this limited resource by subscribers and RespOrgs.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Rachel J. Rothstein", written over a horizontal line.

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